

Title 22—Foreign Relations

(This book contains part 300 to End)

	<i>Part</i>
CHAPTER III—Peace Corps	301
CHAPTER IV—International Joint Commission, United States and Canada	401
CHAPTER V—Broadcasting Board of Governors	501
CHAPTER VII—Overseas Private Investment Corporation	705
CHAPTER IX—Foreign Service Grievance Board Regulations	901
CHAPTER X—Inter-American Foundation	1001
CHAPTER XI—International Boundary and Water Commission, United States and Mexico, United States Section	1100
CHAPTER XII—United States International Development Cooperation Agency	1201
CHAPTER XIV—Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel	1411
CHAPTER XV—African Development Foundation	1500
CHAPTER XVI—Japan-United States Friendship Commission	1600
CHAPTER XVII—United States Institute of Peace	1701

CROSS REFERENCES: U.S. Customs Service, Department of the Treasury: See Customs Duties, 19 CFR chapter I.
International Trade Administration, Department of Commerce: See Commerce and Foreign Trade, 15 CFR chapter III.
Foreign-Trade Zones Board: See Commerce and Foreign Trade, 15 CFR chapter IV.
Immigration and Naturalization Service, Department of Justice: See Aliens and Nationality, 8 CFR chapter I.
Taxation pursuant to treaties: See Internal Revenue, 26 CFR 1.894-1.

CHAPTER III—PEACE CORPS

<i>Part</i>		<i>Page</i>
301	Public access to classified material	5
302	Organization	5
303	Procedures for disclosure of information under the Freedom of Information Act	8
304	Claims against Government under Federal Tort Claims Act	19
305	Eligibility and standards for Peace Corps volunteer service	22
306	Volunteer discrimination complaint procedure	25
308	Implementation of the Privacy Act of 1974	25
309	Claims collection	34
310	Governmentwide debarment and suspension (non- procurement)	73
311	New restrictions on lobbying	51
312	Governmentwide requirements for drug-free workplace (financial assistance)	85

PART 301—PUBLIC ACCESS TO CLASSIFIED MATERIAL

Sec.

301.1 Introduction.

301.2 Requests for mandatory declassification review.

301.3 Action on requests for declassification review.

AUTHORITY: E.O. 12356, 43 FR 14874 dated April 2, 1982.

SOURCE: 49 FR 13692, Apr. 6, 1984, unless otherwise noted.

§ 301.1 Introduction.

The following regulations implement Executive Order 12356 and provide guidance for members of the public desiring a review for declassification of a document of the Peace Corps.

§ 301.2 Requests for mandatory declassification review.

(a) All information originally classified by the Peace Corps shall be subject to review for declassification.

(b) Requests for review of such information for declassification shall be in writing, addressed to the Peace Corps Director of Security, Peace Corps, Washington, DC 20526, and reasonably describe the information sought with sufficient specificity to enable its location with a reasonable amount of effort. Only requests made by a United States citizen or a permanent resident alien, a Federal agency or a State or local government will be considered.

(c) Requests relating to information, either derivatively classified by the Peace Corps or originally classified by another agency but in the possession of the Peace Corps, shall be forwarded, together with a copy of the record, to the originating agency. The transmittal may contain in Peace Corps recommendation for action.

§ 301.3 Action on requests for declassification review.

(a) The Director of Security shall present each request for declassification to the Peace Corps Classification Review Committee, which shall consist of the Associate Director for International Operations, the Associate Director for Management and the General Counsel, or their designees, together

with his or her recommendation for action.

(b) Every effort will be made to complete action on each request within 60 days of receipt thereof.

(c) Information shall be declassified or downgraded as soon as national security considerations permit. If the Classification Review Committee determines that the material for which review is requested no longer requires this protection, it shall be declassified and made available to the requester unless withholding is otherwise authorized by law.

(d) If the Peace Corps Classification Review Committee determines that requested information must remain classified, the requester shall be given prompt notice of the decision and, if possible, a brief explanation of why the information cannot be declassified.

(e) The Peace Corps may refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classified under E.O. 12356.

(f) A requester may appeal a refusal to declassify information to the Director of the Peace Corps, or the Director's designee. Appeals shall be in writing, addressed to the Director of the Peace Corps, Washington, DC 20526, and shall briefly state the reasons why the requester believes that the Peace Corps Classification Review Committee decision is in error. Appeals must be submitted within 30 days after receipt of notice of the Classification Review Committee decision. The decision of the Peace Corps Director, or designee, will be based on the entire record, and will be rendered in writing within 60 days after receipt of an appeal. The decision of the Director or Director's designee is the final Peace Corps action on a request.

PART 302—ORGANIZATION

Sec.

302.1 Introduction.

302.2 Central and field organization, established places at which, the officers from whom, and the methods whereby the public may secure information, make submissions, or request, or obtain decisions; and statements of the general course and

§ 302.1

22 CFR Ch. III (4–1–04 Edition)

methods by which its functions are channeled and determined.

302.3 Rules of procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.

302.4 Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the agency.

AUTHORITY: Sec. 4, Pub. L. 87–239, Stat. 612 (22 U.S.C. 2503, as amended); 5 U.S.C. 552; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389.

SOURCE: 52 FR 47715, Dec. 16, 1987, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 12274, Mar. 16, 2004, part 302 was removed, effective Apr. 15, 2004.

§ 302.1 Introduction.

The regulations of this part are issued pursuant to section 3 of the Administrative Procedure Act, 5 U.S.C. 552, effective July 4, 1967.

§ 302.2 Central and field organization, established places at which, the officers from whom, and the methods whereby the public may secure information, make submittals, or request, or obtain decisions; and statements of the general course and methods by which its functions are channeled and determined.

(a) The following are statements of the central and field organization of the Peace Corps:

(1) *Central Organization*—(i) *Director*. As head of the Peace Corps, the Director is responsible for all the activities of the agency. He or she is assisted by a Deputy Director, a Chief of Staff, and the following staff units:

(A) The Office of the General Counsel which provides legal advice and assistance relating to Peace Corps programs and activities;

(B) The Office of Congressional Relations which serves as primary informational contact between Congress and the Peace Corps, advising the Director and other senior managers on governmental and legislative affairs;

(C) The Office of Public Affairs which promotes awareness of the Peace Corps, monitors agency news coverage and prepares/disseminates national news releases and other information about the Peace Corps. The Office also

coordinates agency activities and maintains files relating to graphic, photographic and audiovisual services and works closely with the Advertising Council on placement on public service announcements;

(D) The office of Private Sector Relations/Development Education which coordinates private sector support and participation in Peace Corps activities;

(E) The Executive Secretariat which manages correspondence and other documents on behalf of the Director.

(ii) Office of the Associate Director for International Operations consists of the Regional Offices for Africa; Inter-America; and North Africa, Near East, Asia and Pacific; and the Office of Training and Program Support. The immediate office of the Associate Director includes the Overseas Staff Training and the United Nations Volunteer Program staff.

(A) The Regional offices are responsible for the negotiation, establishment and operation of Peace Corps projects overseas and for the training of Peace Corps Volunteers for such projects. They also provide, on behalf of the Director, policy guidance and immediate supervision to Peace Corps staff and operations overseas.

(B) The Office of Training and Program Support provides technical assistance and policy direction in the development of effective program and training strategies/designs, and coordinates a wide variety of program and training services.

(iii) The Office of the Associate Director for Management consists of the following offices:

A) The Office of Medical Services which provides medical screening for applicants and health care services to Volunteers and in-country staff.

(B) The Office of Special Services which provides personal and administrative support to Peace Corps trainees and Volunteers, and their families.

(C) The Office of Personnel Policy and Operations which provides Agency personnel services.

(D) The Office of Financial Management which provides accounting, contracting and budget operations.

(E) The Office of Planning and Policy Analysis which provides support to the

Peace Corps

§ 302.2

Agency in the areas of policy, planning, assessment and management information.

(F) The Office of Administrative Services which provides administrative and logistical support to the Agency.

(G) The Office of Information Resources Management which manages the Agency's information resources and central computer facility.

(H) The Office of Compliance which carries out Agency audit, investigation, internal controls and equal opportunity functions.

(iv) The Office of the Associate Director for Volunteer Recruitment and Selection consists of the following offices:

(A) The Office of Recruitment which directs the operational and managerial aspects of headquarters and domestic field recruitment activities in support of the recruitment of qualified Peace Corps trainees.

(B) The Office of Placement which conducts final placement, processing and orientation of Peace Corps applicants in preparation for final selection and training.

(2) *Domestic Field Organization*

Regional Peace Corps Recruitment Offices: (i) Chicago Regional Office, 175 West Jackson Boulevard, Room A-531, Chicago, Illinois 60604. (Oversees Area Offices in Atlanta, Chicago, Detroit, Kansas City and Minneapolis.)

(ii) New York Regional Office, 1515 Broadway, Room 3515, New York, New York 10036. (Oversees Area Offices in Miami, Puerto Rico, Washington, DC, Philadelphia, New York City and Boston.)

(iii) San Francisco Regional Office, 211 Main Street, Room 533, San Francisco, California 94105. (Oversees Area Offices in San Francisco, Seattle, Denver, Los Angeles, and Dallas.)

(3) *Foreign Field Organization—(i) Africa Region.*

Benin, Cotonou
Botswana, Gaborone
Burundi, Bujumbura
Cameroon, Yaounde
Central African Republic, Bangui
Chad, N'Djamena
Gabon, Libreville
The Gambia, Banjul
Ghana, Accra
Guinea, Conakry
Kenya, Nairobi

Lesotho, Maseru
Liberia, Monrovia
Malawi, Lilongwe
Mali, Bamako
Mauritania, Nouakchott
Niger, Niamey
Rwanda, Kigali
Senegal, Dakar
Sierra Leone, Freetown
Swaziland, Mbabane
Tanzania, Dar es Salaam
Zaire, Kinshasa
Togo, Lome

(ii) *Inter-America Region*

Belize, Belize City
Costa Rica, San Jose
Dominican Republic, Santo Domingo
Eastern Caribbean, Bridgetown, Barbados
Ecuador, Quito
Guatemala, Guatemala City
Haiti, Port-au-Prince
Honduras, Tegucigalpa
Jamaica, Kingston
Paraguay, Asuncion
Turks and Caicos Islands (Santo Domingo, Dominican Republic)

(iii) *North Africa, Near East Asia and Pacific Region*

Cook Islands (Apia, Western Samoa)
Fiji, Suva
Federated States of Micronesia, Pohnpei
Kiribati (Honiara, Solomon Islands)
Marshall Islands, Majuro
Morocco, Rabat
Nepal, Kathmandu
Papua New Guinea, Port Moresby
Philippines, Manila
Republic of Palau (Pohnpei, F.S.M)
Seychelles, Victoria
Solomon Islands, Honiara
Sri Lanka, Colombo
Thailand, Bangkok
Tonga, Nuku'alofa
Tunisia, Tunis
Tuvalu (Suva, Fiji)
Western Samoa, Apia
Yemen Arab Republic, Sana'a

(b) Any person desiring information concerning a matter handled by the Peace Corps, or any persons desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing with the appropriate office. If the office receiving the communications does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office, or, if oral, the person will be advised how to proceed.

§ 302.3

§ 302.3 Rules of procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.

Forms regarding the following listed matters and instructions relating thereto may be obtained upon application to the offices listed below.

Application for Peace Corps, Office of Recruitment, Room P-301.

Volunteer Service, Peace Corps, 806 Connecticut Avenue NW., Washington, DC 20526, or the Peace Corps area recruitment offices listed in § 302.2(a)(2).

§ 302.4 Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the agency.

The Peace Corps regulations published under the provisions of the Administrative Procedure Act are found in part 301 of title 22 of the Code of Federal Regulations and the FEDERAL REGISTER. These regulations are supplemented from time to time by amendments appearing initially in the FEDERAL REGISTER.

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

303.1 Purpose.

303.2 Definitions.

303.3 Policy.

303.4 Records published in the FEDERAL REGISTER.

303.5 Public reading room.

303.6 Procedures for use of public reading room.

303.7 Index of records.

303.8 Requests for records.

303.9 Exemptions for withholding records.

303.10 Responsibilities and authorities.

303.11 Denials.

303.12 Appeals.

303.13 Fees.

303.14 Procedures for responding to a subpoena.

AUTHORITY: 5 U.S.C. 552; 22 U.S.C. 2501, et. seq.; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

22 CFR Ch. III (4-1-04 Edition)

SOURCE: 68 FR 66008, Nov. 25, 2003, unless otherwise noted.

§ 303.1 Purpose.

This part sets out the rules and procedures the Peace Corps follows in making records available to the public under the Freedom of Information Act (FOIA).

§ 303.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester has made a commercial use request, the Peace Corps will look to the use to which a requester will put the documents requested. When the Peace Corps has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a record requested pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *OIG records* means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for

Peace Corps

§ 303.5

law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

(f) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Peace Corps in connection with the transaction of Peace Corps' business and preserved by the Peace Corps as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Peace Corps, or because of the informational value of data in them. The term does not include, *inter alia*, books, magazines, or other materials acquired solely for library purpose, or that are otherwise publicly available.

(g) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(h) *Review* means the process of examining a document located in response to a request to determine whether any portion of such document is exempt from disclosure. It also includes processing any such document for disclosure. Review does not include time spent resolving general legal or

policy issues regarding the application of exemptions.

(i) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

§ 303.3 Policy.

The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA. Records exempt from disclosure under the FOIA may be made available at the discretion of the Peace Corps.

§ 303.4 Records published in the Federal Register.

The Peace Corps publishes its notices and substantive regulations in the FEDERAL REGISTER. It also publishes information on its basic structure and operations necessary to inform the public how to deal effectively with the Peace Corps in the *United States Government Manual*, a special publication of the FEDERAL REGISTER. The Peace Corps will make reasonable efforts to currently update such information, which includes information on Peace Corps' location and functions, and how the public may obtain information or forms, or make submittals or requests. The Peace Corps' published regulations are at 22 CFR Chapter III.

§ 303.5 Public reading room.

(a) The Peace Corps will maintain a public reading room at its headquarters at 1111 20th Street, NW., Washington, DC 20526. This room will be supervised and will be open to the public during Peace Corps' regular

§ 303.6

business hours for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final public opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases that involve the Peace Corps;

(2) Statements of policy and interpretations adopted by the Peace Corps that are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records which the Peace Corps determines are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The index required by § 303.7; and

(6) Other records the Peace Corps has determined are of general interest to members of the public in understanding activities of the Peace Corps or in dealing with the Peace Corps in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to § 552(b) of the FOIA. Such record will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it an explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. It technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Electronic reading room.* Records required by the FOIA to be maintained and made available in the public reading room created by the Peace Corps on

22 CFR Ch. III (4–1–04 Edition)

or after November 1, 1996, shall be made available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Peace Corps Web site at <http://www.peacecorps.gov>.

§ 303.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 303.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records shall arrange a time in advance, by telephone or letter request made to the Peace Corps FOIA Officer. Persons submitting request by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written request should identify the records sought in the manner described in § 303.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 303.7 Index of records.

The Peace Corps will maintain a current index identifying any matter within the scope of § 303.4 or § 303.5(b)(1) through (5). The index will be maintained and made available for public inspection and copying at the Peace Corps' headquarters in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in § 303.13(e). The Peace Corps will also make the index available on its public Web site.

§ 303.8 Requests for records.

(a) Except for records required by the FOIA to be published in the FEDERAL REGISTER or to be made available in the public reading room, Peace Corps records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

Peace Corps

§ 303.8

(b) *Requests.* Requests for records under this section shall be made in writing, shall include the signature of the requester, and the envelope and the letter shall be clearly marked "Freedom of Information Request." No e-mail requests will be accepted. All such requested shall be addressed to the FOIA Officer. Requests by letter shall use the address given in §303.5(a). Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as it is properly identified, and will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. The request shall be stamped "received" on the date it is received by the FOIA Office.

(c) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

(d) To facilitate the location of records by the Peace Corps, a requester should try to provide the following kinds of information, if known;

(1) The specific event or action to which the record refers;

(2) The unit or program of the Peace Corps which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a particular form, a contract, or a report;

(5) Personnel of the Peace Corps who may have prepared or have knowledge of the record; or

(6) Citations to newspapers or publications which have referred to the record.

(e) The Peace Corps is not required to create a record or to perform research to satisfy a request.

(f) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in §303.13(f). The Peace Corps shall respond to such request as promptly as possible.

(g) *Format.* The Peace Corps will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(h) *Initial response/delays.* (1) The FOIA Officer, upon request for any records made in accordance with this section, except in the case of a request for OIG records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the FOIA Officer determines that a request or portion thereof is for OIG records, the FOIA Officer shall promptly refer the request or portion thereof to the OIG and send notice of such referral to the requester. In such case, the OIG FOIA Officer shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the

requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If for any reason, a request for Agency information goes directly to the OIG rather than through the FOIA Officer, the OIG shall provide notice to the FOIA Officer of its receipt of the request. The FOIA Office and the OIG should normally consult with each other whenever they receive requests for the same or similar records.

(3) *Unusual circumstances.* As used in this part, “unusual circumstances” are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from components or locations that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization having a substantial interest in the determination of the request or among two or more components of the Peace Corps having a substantial subject matter interest therein.

(i) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (h) of this section, the Peace Corps may ask the requester to narrow the request or agree to an additional delay.

(j) When no determination can be dispatched within the applicable time limit, the FOIA Officer or the OIG FOIA Officer shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Associate Director for the Office of Management or the Inspector General, in accordance with § 303.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 303.12. The FOIA Offi-

cer or the OIG FOIA Officer may ask the requester to forego an appeal until a determination is made.

(k) After it has been determined that a request will be granted, the responsible official will act with due diligence in providing a prompt response.

(l) *Expedited treatment.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Peace Corps or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) a matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Peace Corps pursuant to paragraph (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten business days of its receipt of a request for expedited processing, the FOIA Officer or the OIG FOIA Officer shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Peace Corps.

Peace Corps

§ 303.9

(5) Appeals shall be made to the Associate Director for the Office of Management, who shall respond within 10 business days of receipt of the appeal.

§ 303.9 Exemptions for withholding records.

(a) The Peace Corps may withhold a requested record from public disclosure only if the record fits within one or more of the following FOIA exemptions:

(1) Matter specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order;

(2) Matter which is related solely to the internal personnel rules and practices of the Peace Corps;

(3) Matter which is specifically exempted from disclosure by statute (other than exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Peace Corps;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes including enforcing the Peace Corps Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) In the event that one or more of the above exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made. At the discretion of the Peace Corps officials authorized to grant or deny a request for records, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Peace Corps.

(e) Proprietary information. (1) It is the policy of the Peace Corps to withhold proprietary information that falls within the protection of paragraph

(a)(4) of this section. Proprietary information includes trade secrets, or commercial or financial information obtained from a person, the disclosure of which could reasonably be expected to cause substantial competitive harm.

(2) It is also the policy of the Peace Corps to give submitters of arguably proprietary information an adequate opportunity to provide information to the Peace Corps to establish that the information constitutes protected proprietary information.

(3) A person submitting arguably proprietary information to the Peace Corps will be notified in writing by the Peace Corps if there is a FOIA request for the information, unless:

(i) The Peace Corps has already decided that the information should be withheld;

(ii) The information has been lawfully published or has been officially made available to the public; or

(iii) Disclosure of the information is required by law.

(4) The notice shall afford the submitter at least ten business days in which to object to the disclosure of any requested information. Whenever the Peace Corps provides such notice to the submitter, it shall also notify the requester that notice and an opportunity to comment are being provided to the submitter.

(5) A submitter's request for protection for information under paragraph (a)(4) of this section shall:

(i) Specifically identify the exact material claimed to be confidential proprietary information;

(ii) State whether the information identified has ever been released to a person who is not in a confidential relationship with the submitter;

(iii) State the basis for the submitter's belief that the information is not commonly known or readily ascertainable by outside persons; and

(iv) State how release of the information would cause harm to the submitter's competitive position.

(6) The Peace Corps shall consider the submitter's objections and specific grounds for non-disclosure when deciding whether to disclose the information. If the Peace Corps decides to disclose the information, it shall, to the extent permitted by law, provide the

submitter at least ten business days notice of its decision before the information is disclosed and a statement of its reasons for not sustaining the objection to disclosure. Whenever the Peace Corps notifies the submitter of its final decision, it shall also notify the requester.

(7) Whenever a FOIA requester brings suit seeking to compel disclosure of proprietary information, the Peace Corps shall promptly notify the submitter.

[68 FR 66008, Nov. 25, 2003, as amended at 68 FR 68695, Dec. 9, 2004]

§ 303.10 Responsibilities and authorities.

(a) *Legal counsel.* The General Counsel shall furnish legal advice to Peace Corps officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Peace Corps.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or deny requests for records, except for OIG records, under this part. The OIG FOIA Officer is authorized to grant or deny requests for OIG records under this part. The FOIA Officer and the OIG FOIA Officer shall consult with each other when a request includes both Peace Corps and OIG records in order to ensure consistency and lack of duplication in processing the request.

(c)(1) *Records received from other agencies.* When the Peace Corps receives a request for a record in its possession that it has received from another agency, it shall determine whether the other agency is better qualified to decide whether the record is exempt from disclosure and, if so, whether it should be disclosed as a matter of discretion. If the Peace Corps determines it is better qualified to process the record in response to the request, then it shall do so. If the Peace Corps determines it is not better qualified to process the request, it shall either:

(i) Consult with the other agency before responding to the request; or

(ii) Refer the responsibility for responding to the request for the record to the other agency (but only if the

Peace Corps

§ 303.12

agency is subject to FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(2) *Law enforcement and classified information.* Notwithstanding paragraph (c)(1) of this section:

(i) Whenever the Peace Corps receives a request for a record containing information that relates to an investigation of a possible violation of law that was originated by another agency, the Peace Corps will either consult with the other agency before responding or refer the responsibility for responding to the request to the other agency; and

(ii) Whenever a request is made for a record containing information that has been classified by another agency or may be appropriate for classification under Executive Order 12958 or any other executive order concerning the classification of records, the Peace Corps shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in the information, as appropriate.

(3) *Notice of referral.* Whenever the Peace Corps refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and the part of the request that has been referred.

(4) *Effect of consultations and referrals on timing of response.* All consultations and referrals will be handled according to the date the FOIA request was initially received by the Peace Corps.

(5) *Agreements with other agencies.* The Peace Corps may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

§ 303.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 303.8 shall be in writing and shall include, as applicable:

(1) A reference to the applicable exemption or exemptions in § 303.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made, if other than the FOIA Officer;

(5) The name and title of the person or persons responsible for denying the request, if other than the FOIA Officer; and

(6) An explanation of the right to appeal the denial and the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) A partial deletion of a record made available to a requester shall be deemed a denial of a record for purposes of paragraph (a) of this section. All denials shall be treated as final opinions under § 303.5(b).

§ 303.12 Appeals.

(a) Any person whose written request has been denied is entitled to appeal the denial within 20 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in § 303.5(a). The envelope and letter should be clearly marked "Freedom of Information Act Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) The decision of the Associate Director for the Office of Management or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 303.11(a)(1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 business

§ 303.13

22 CFR Ch. III (4–1–04 Edition)

days after receipt of the appeal, unless an additional period is justified pursuant to § 303.8(i) and such period taken together with any earlier extension does not exceed 10 business days. The decision by the Associate Director for the Office of Management or the Inspector General shall constitute the final action of the Peace Corps. All such decisions shall be treated as final opinions under § 303.5(b).

§ 303.13 Fees.

(a) For information routinely provided by the Peace Corps to the public in the normal course of doing business, such as informational or recruiting brochures, no fees will be charged.

(b) For each a commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

(c) For each request for records sought by a representative of the news media or by an educational or non-commercial scientific institution, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of reasonable standard charges for services regarding the production or disclosure of the Peace Corps records is as follows:

(1) Manual search and review of records: Salary rate of employee[s] performing the search and review plus 16%. Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual costs as incurred;

(3) Duplication by paper copy: 10 cents per page;

(4) Duplication by other methods: Actual costs as incurred;

(5) Certification of true copies: \$1.00 each;

(6) Packing and mailing records: Actual costs as incurred; and

(7) Special delivery or express mail: Actual charges as incurred.

(f) *Fee waivers:* Fees will be waived or reduced below the fees established under paragraph (e) of this section if

disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Peace Corps or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal government, the Peace Corps shall consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Peace Corps or Federal government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Peace Corps or Federal government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding;” and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of Peace Corps or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Peace Corps shall consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(3) These fee waiver/reduction provisions will be subject to appeal in the

Peace Corps

§ 303.14

same manner as appeals from denial under § 303.12.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Peace Corps will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee to another federal agency or to Peace Corps within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Peace Corps until such payment is made.); or

(2) The Peace Corps determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 business days of receipt of the request by the Peace Corps. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Peace Corps for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Peace Corps for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Peace Corps.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) The Agency is not required to process a request for a requester who

has not paid FOIA fees owed to another Federal agency.

(l) If the Peace Corps reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Peace Corps shall aggregate such requests and charge accordingly. Likewise, the Peace Corps will aggregate multiple requests for documents received from the same requester within 45 business days.

(m) The Peace Corps reserves the right to limit the number of copies of any document that will be provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

§ 303.14 Procedures for responding to a subpoena.

(a) *Purpose and scope.* (1) This part sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order or other demand (collectively referred to as a “demand”) of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Agency;

(ii) The production or disclosure of any information relating to material contained in the files of the Agency;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status, or

(iv) The production of an employee of the Agency for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this part, the term “employee of the Agency” includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the director of the Agency, including personal services contractors. Also for purposes of this part, records of the Agency do not include records of the Office of Inspector General.

(3) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(4) This part applies to:

- (i) State and local court, administrative and legislative proceedings; and
- (ii) Federal court and administrative proceedings.

(5) This part does not apply to:

- (i) Congressional requests or subpoenas for testimony or documents;
- (ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations); Any questions whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

(6) Nothing in this part otherwise permits disclosure of information by the Agency except as is provided by statute or other applicable law.

(b) *Procedure in the event of a demand for production or disclosure.* (1) No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in § 303.14(a) produce any material, disclose any information or appear in any proceeding, described in § 303.14(a) without the approval of the General Counsel or designee.

(2) Whenever an employee or former employee of the Peace Corps receives a demand for the production of material or the disclosure of information described in § 303.14(a) he shall immediately notify and provide a copy of the demand to the General Counsel or designee. The General Counsel, or designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served and why the information sought is unavailable by any other means or from any other sources.

(3) The General Counsel, or designee, in consultation with appropriate Agen-

cy officials, including the Agency's FOIA Officer, or designee, and in light of the considerations listed in § 303.14(d), will determine whether the person on whom the demand was served should respond to the demand.

(4) To the extent he deems it necessary or appropriate, the General Counsel or designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

(c) *Considerations in determining whether production or disclosure should be made pursuant to a demand.* (1) In deciding whether to make disclosures pursuant to a demand, the General Counsel or designee, may consider, among things:

(i) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose; and

(ii) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(2) Among the demands in response to which disclosure will not be made are those demands with respect to which any of the following factors exist:

(i) Disclosure would violate a statute or a rule of procedure;

(ii) Disclosure would violate the privacy rights of an individual;

(iii) Disclosure would violate a specific regulation;

(iv) Disclosure would reveal classified information, unless appropriately declassified by the originating agency;

(v) Disclosure would reveal trade secrets or proprietary information without the owner's consent;

(vi) Disclosure would otherwise adversely affect the interests of the United States or the Peace Corps; or

(vii) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

Peace Corps

§ 304.3

PART 304—CLAIMS AGAINST GOVERNMENT UNDER FEDERAL TORT CLAIMS ACT

GENERAL PROVISIONS

Sec.

304.1 Scope; definitions.

PROCEDURES

304.2 Administrative claim; when presented; appropriate Peace Corps Office.

304.3 Administrative claim; who may file.

304.4 Administrative claim; evidence and information to be submitted.

304.5 Investigations.

304.6 Claims investigation.

304.7 Authority to adjust, determine, compromise, and settle claims.

304.8 Limitations on authority.

304.9 Referral to Department of Justice.

304.10 Review of claim.

304.11 Final denial of claim.

304.12 Action on approved claim.

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; secs. 4 and 5(h), 75 Stat. 612, 22 U.S.C. 2503; E.O. 11041, as amended, 27 FR 7859, 3 CFR 1959-1963 Comp., page 623; sec. 2(6), State Department Delegation of Authority No. 85-11A, as amended.

SOURCE: 34 FR 5840, Mar. 28, 1969, unless otherwise noted.

GENERAL PROVISIONS

§ 304.1 Scope; definitions.

(a) This subpart applies to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Peace Corps, a person serving the Peace Corps under invitational travel orders, or a Peace Corps Volunteer or trainee while acting within the scope of his office or employment.

(b) This subpart is not applicable to claims arising in a foreign country; it is applicable to claims arising in Puerto Rico and the Virgin Islands.

(c) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 FR 16616; 28 CFR part 14).

(d) For the purposes of this subpart, the term "General Counsel" means the General Counsel of the Peace Corps or his designee.

PROCEDURES

§ 304.2 Administrative claim; when presented; appropriate Peace Corps Office.

(a) For purposes of this subpart, a claim shall be deemed to have been presented when the Peace Corps receives, at a place designated in paragraph (b) of this section, an executed "Claim for Damages or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to the Peace Corps, but which was mistakenly addressed to or filed with another Federal agency, is deemed to have been presented to the Peace Corps as of the date that the claim is received by the Peace Corps. If a claim is mistakenly addressed to or filed with the Peace Corps, the Peace Corps shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) A claimant shall mail or deliver his claim to the General Counsel, Peace Corps, 806 Connecticut Avenue NW., Washington, DC. 20525.

§ 304.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. Claim for loss partially compensated by an insurer with the rights

§ 304.4

22 CFR Ch. III (4–1–04 Edition)

of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant.

§ 304.4 Administrative claim; evidence and information to be submitted.

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Peace Corps or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the Peace Corps any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time

lost from employment, whether he is a full-or part-time employee, and wages or salary actually lost;

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of decedent's survivors, including identification of those survivors who were dependent for support upon decedent at the time of his death.

(4) Degree of support afforded by decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information.

(1) Proof of ownership.

Peace Corps

§ 304.9

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) Two or more itemized written estimates of the cost of such repairs and any itemized receipt of payment for necessary repairs.

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 304.5 Investigations.

The Peace Corps may investigate, or the General Counsel may request any other Federal agency to investigate, a claim filed under this subpart.

§ 304.6 Claims investigation.

(a) When a claim has been filed with the Peace Corps, the General Counsel will send a copy of the claim to the head of the office concerned and ask him to designate one employee of that office who shall act as, and who shall be referred to herein as, the Claims Investigating Officer for that particular claim. The Claims Investigating Officer shall, with the advice of the General Counsel, where necessary:

(1) Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property.

(2) Ascertain the extent of loss or damage to the claimant's property.

(3) Assemble the necessary forms with required data contained therein.

(4) Prepare a brief statement setting forth the facts relative to the claim (in the case of motor vehicle accidents, facts should be recorded on Standard Form 91-A), a statement whether the claim satisfies the requirements of this subpart, and a recommendation as to the amount to be paid in settlement of the claim.

(5) The head of the office concerned will be responsible for assuring that all necessary forms, statements, and all supporting papers have been procured for the file and will transmit the entire file to the General Counsel.

§ 304.7 Authority to adjust, determine, compromise, and settle claims.

The authority to consider, ascertain adjust, determine, compromise, and settle claims under section 2672 of title 28, United States Code, and this subpart, subject to § 304.8, has been retained by the Director of the Peace Corps.

§ 304.8 Limitations on authority.

(a) An award, compromise, or settlement of a claim under section 2672 of title 28, United States Code, and this subpart in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when, in the opinion of the General Counsel:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party, and the Peace Corps is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when the Peace Corps is informed or is otherwise aware that the United States or an officer, employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 304.9 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 304.8, the referral or request shall be transmitted to the Department

§ 304.10

of Justice by the General Counsel pursuant to 28 CFR 14.7 (1968).

§ 304.10 Review of claim.

(a) Upon receipt of the claim file from the head of the office concerned, the General Counsel will ascertain that all supporting papers are contained in the file.

(b) After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim.

§ 304.11 Final denial of claim.

The General Counsel will send notification of the final denial of an administrative claim to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Peace Corps action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 304.12 Action on approved claim.

(a) Payment of a claim approved under this subpart is contingent on claimant's execution of (1) a "Claim for Damage or Injury," Standard Form 95; and (2) a "Voucher for Payment," Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate the claimant and his attorney as copayees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

22 CFR Ch. III (4-1-04 Edition)

PART 305—ELIGIBILITY AND STANDARDS FOR PEACE CORPS VOLUNTEER SERVICE

Sec.

305.1 Purpose and general guideline.

305.2 Eligibility.

305.3 Background investigations.

305.4 Selection standards.

305.5 Procedures.

AUTHORITY: Sec. 4(b), 5(a) and 22, 75 Stat. 612, 22 U.S.C. 2504; E.O. 12137, May 16, 1979, sec. 601, International Security and Development Cooperation Act of 1981; 95 Stat. 1519 at 1540, sec. 417(c)(1), Domestic Volunteer Service Act (42 U.S.C. 5057(c)(1)).

SOURCE: 49 FR 38939, Oct. 2, 1984, unless otherwise noted.

§ 305.1 Purpose and general guideline.

This subpart states the requirements for eligibility for Peace Corps Volunteer service and the factors considered in the assessment and selection of eligible applicants for training and service. In selecting individuals for Peace Corps Volunteer service under this subpart, as required by section 5(a) of the Peace Corps Act, as amended, "no political test shall be required to be taken into consideration, nor shall there be any discrimination against any person on account of race, sex, creed, or color." Further, in accordance with section 417(c)(1) of the Domestic Volunteer Service Act, as amended (42 U.S.C. 5057(c)(1)) the nondiscrimination policies and authorities set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), are also applicable to the selection, placement, service and termination of Peace Corps Volunteers.

§ 305.2 Eligibility.

In addition to those skills, personal attributes and aptitudes required for available Volunteer assignments, the following are the basic requirements that an applicant must satisfy in order to receive an invitation to train for Peace Corps Volunteer service.

(a) *Citizenship.* The applicant must be a citizen of the United States or have made arrangements satisfactory to the Office of Marketing, Recruitment,

Peace Corps

§ 305.2

Placement and Staging (MRPS) and the Office of General Counsel (D/GC) to be naturalized prior to taking the oath prescribed for enrollment as a Peace Corps Volunteer. (See section 5[a] of the Peace Corps Act, as amended).

(b) *Age.* The applicant must be at least 18 years old.

(c) *Medical status.* The applicant must, with reasonable accommodation, have the physical and mental capacity required of a Volunteer to perform the essential functions of the Peace Corps Volunteer assignment for which he or she is otherwise eligible, and be able to complete an agreed upon tour of service, ordinarily two years, without unreasonable disruption due to health problems. In determining what is a reasonable accommodation, the Peace Corps may take into account the adequacy of local medical facilities. In determining whether an accommodation would impose an undue hardship on the operation of the Peace Corps, factors to be considered include: (1) The overall size of the Peace Corps program with respect to the number of employees and/or Volunteers, size of budget, and size and composition of staff at post of assignment, (2) the nature and cost of the accommodation, and (3) the capacity of the host country agency to which the applicant would be assigned to provide any special accommodation necessary for the applicant to carry out the assignment.

(d) *Legal status.* The applicant must not be on parole or probation to any court or have any court established or acknowledged financial or other legal obligation which, in the opinion of D/GC and MRPS, cannot be satisfied or postponed during the period of Peace Corps service.

(e) *Intelligence background.* In accordance with longstanding Peace Corps policy, prior employment by any agency of the United States Government, civilian or military, or division of such an agency, whose exclusive or principle function is the performance of intelligence activities; or engaging in intelligence activities or related work may disqualify a person from eligibility for Peace Corps service. See section 611 of the Peace Corps Manual.

(f) *Marital status.* (1) Ordinarily, if an applicant is married or intends to

marry prior to Peace Corps service, both husband and wife must apply and qualify for assignment at the same location. Exceptions to this rule will be considered by the Office of Volunteer Placement (MRPS/P) under the following conditions:

(2)(i) *Unaccompanied married applicant.* In order to qualify for consideration for Peace Corps service, a married applicant whose spouse does not wish to accompany him/her overseas must provide the Office of Placement (MRPS/P) with a notarized letter from the spouse acknowledging that he or she is aware of the applicant spouse's intention to serve as a Peace Corps Volunteer for two years or more and that any financial and legal obligations of the applicant to his or her spouse can be met during the period of Peace Corps service. In determining eligibility in such cases, MRPS/P will also consider whether the service of one spouse without the accompaniment of the other can reasonably be anticipated to disrupt the applicant spouse's service overseas.

(ii) In addition to satisfying the above requirements, a married applicant who is legally, or in fact, separated from his or her spouse, must provide MRPS/P with copies of any agreements or other documentation setting forth any legal and financial responsibilities which the parties have to one another during any period of separation.

(3) *Divorced applicants.* Applicants who have been divorced must provide MRPS/P with copies of all legal documents related to the divorce.

(g) *Dependents.* Peace Corps has authority to provide benefits and allowances for the dependent children of Peace Corps Volunteers who are under the age of 18. However, applicants with dependent children under the age of 18 will not be considered eligible for Peace Corps service unless MRPS/P determines that the skills of the applicants are essential to meet the requirements of a Volunteer project, and that qualified applicants without minor dependents are not available to fill the assignment.

(1) *Procedures for placing volunteers with children.* The placement of any couple with dependent children must

§ 305.3

have the concurrence of the appropriate Country and Regional Director.

(2) If the applicant has any dependents who will not accompany him or her overseas, the applicant must satisfy MRPS/P and the General Counsel that adequate arrangements have been made for the care and support of the dependent during any period of training and Peace Corps service; that such service will not adversely affect the relationship between the applicant and dependent in such a way as to disrupt his or her service; and that he or she is not using Peace Corps service to escape responsibility for the welfare of any dependents under the age of 18.

(3) Married couples with more than two children or with children who are below two years of age are not eligible for Peace Corps service except in extraordinary circumstances as approved by the Director of the Peace Corps or designee.

(h) *Military service.* Applicants with military or national guard obligation must provide MRPS/P with a written statement from their commanding officer that their presence will not be required by their military unit for the duration of their Peace Corps service, except in case of national emergency.

(i) *Failure to disclose requested information.* Failure to disclose, and/or the misrepresentation of material information requested by the Peace Corps regarding any of the above described standards of eligibility may be grounds for disqualification or separation from Peace Corps Volunteer service. (See section 284 of the Peace Corps Manual.)

§ 305.3 Background investigations.

Section 22 of the Peace Corps Act states that to ensure enrollment of a Volunteer is consistent with the national interest, no applicant is eligible for Peace Corps Volunteer service without a background investigation. The Peace Corps requires that all applicants accepted for training have as a minimum a National Agency Check. Information revealed by the investigation may be grounds for disqualification from Peace Corps service.

§ 305.4 Selection standards.

To qualify for selection for overseas service as a Peace Corps Volunteer, ap-

22 CFR Ch. III (4-1-04 Edition)

plicants must demonstrate that they possess the following personal attributes:

(a) *Motivation.* A sincere desire to carry out the goals of Peace Corps service, and a commitment to serve a full term as a Volunteer.

(b) *Productive competence.* The intelligence and educational background to meet the needs of the individual's assignment.

(c) *Emotional maturity/adaptability.* The maturity, flexibility, and self-sufficiency to adapt successfully to life in another culture, and to interact and communicate with other people regardless of cultural, social, and economic differences.

(d) *Skills.* By the end of training, in addition to the attributes mentioned above, a Trainee must demonstrate competence in the following areas:

(1) *Language.* The ability to communicate in the language of the country of service with the fluency required to meet the needs of the overseas assignment.

(2) *Technical competence.* Proficiency in the technical skills needed to carry out the assignment.

(3) *Knowledge.* Adequate knowledge of the culture and history of the country of assignment to ensure a successful adjustment to, and acceptance by, the host country society. The Trainee must also have an awareness of the history and government of the United States which qualifies the individual to represent the United States abroad.

(e) *Failure to meet standards.* Failure to meet any of the selection standards by the completion of training may be grounds for deselection and disqualification from Peace Corps service.

§ 305.5 Procedures.

Procedures for filing, investigating, and determining allegations of discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation in the application of any provision of this part are contained in MS 293 (45 CFR part 1225).

Peace Corps

§ 308.4

PART 306—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

CROSS REFERENCE: ACTION regulations concerning the volunteer discrimination complaint procedure, appearing in 45 CFR part 1225, are applicable to Peace Corps volunteers. Part 1225 appears at 46 FR 1609, Jan. 6, 1981.

PART 308—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

- 308.1 Purpose.
- 308.2 Policy.
- 308.3 Definitions.
- 308.4 Disclosure of records.
- 308.5 New uses of information.
- 308.6 Reports regarding changes in systems.
- 308.7 Use of social security account number in records systems. [Reserved]
- 308.8 Rules of conduct.
- 308.9 Records systems—management and control.
- 308.10 Security of records systems—manual and automated.
- 308.11 Accounting for disclosure of records.
- 308.12 Contents of records systems.
- 308.13 Access to records.
- 308.14 Specific exemptions.
- 308.15 Identification of requesters.
- 308.16 Amendment of records and appeals with respect thereto.
- 308.17 Denial of access and appeals with respect thereto.
- 308.18 Fees.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 50 FR 1844, Jan. 14, 1985, unless otherwise noted.

§ 308.1 Purpose.

The purpose of this part is to set forth the basic policies of the Peace Corps governing the maintenance of systems of records containing personal information as defined in the Privacy Act of 1974 (5 U.S.C. 552a). Records included in this part are those described in the aforesaid Act and maintained by the Peace Corps and/or any component thereof.

§ 308.2 Policy.

It is the policy of the Peace Corps to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any records system and to

provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is collected in order to maintain its records with fairness to the individuals who are the subject of such records.

§ 308.3 Definitions.

(a) *Record* means any document, collection, or grouping of information about an individual maintained by the agency, including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or personal identification number, symbol, photograph, or other identifying particular assigned to such individual, such as a finger or voiceprint.

(b) *System of Records* means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(c) *Routine Use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term *agency* means the Peace Corps or any component thereof.

(e) The term *individual* means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term *maintain* includes the maintenance, collection, use or dissemination of any record.

(g) The term *Act* means the Privacy Act of 1974 (5 U.S.C. 552a) as amended from time to time.

§ 308.4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency, without the express written consent of

§ 308.5

22 CFR Ch. III (4–1–04 Edition)

the individual to whom the record pertains, or his or her agent or attorney, except in the following instances:

(a) To officers or employees of the Peace Corps having a need for such record in the official performance of their duties.

(b) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(c) For routine uses as published in the FEDERAL REGISTER.

(d) To the Bureau of the Census for uses pursuant to title 13.

(e) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(f) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives or to the Administrator of General Services or his designee to determine if it has such value.

(g) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement activities, if the activity is authorized by law, and the head of any such agency or instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected: *Provided*, That such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(h) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any individual provided that after such disclosure, notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(i) To either House of Congress or to a subcommittee or committee (joint or of either house) to the extent the subject matter falls within their jurisdiction.

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to an order by the presiding judge of a court of competent jurisdiction. If any record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

(l) To consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) in accordance with 31 U.S.C. 3711, and under contracts for collection services as authorized in 31 U.S.C. 3718.

§ 308.5 New uses of information.

The agency shall publish in the FEDERAL REGISTER a notice of its intention to establish a new or revised routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the new or revised routine use is to be established.

(b) The authority for maintaining the system of records.

(c) The categories of records maintained in the system.

(d) The purpose for which the record is to be maintained.

(e) The proposed routine use(s).

(f) The purpose of the routine use(s).

(g) The categories of recipients of such use.

In the event of any request for an addition to the routine uses of the systems which the agency maintains, such request may be sent to the following officer: Director, Office of Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

§ 308.6 Reports regarding changes in systems.

The agency shall provide to Congress and the Office of Management and Budget advance notice of any proposal

Peace Corps

§ 308.10

to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines provided by the Office of Management and Budget.

§ 308.7 Use of social security account number in records systems. [Reserved]

§ 308.8 Rules of conduct.

(a) The head of the agency shall assure that all persons involved in the design, development, operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the criminal penalties provided under the Act, and the fact the agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 308.9 Records systems—management and control.

(a) The Director, Office of Administrative Services, shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers wherever not in use or in the direct control of authorized personnel.

§ 308.10 Security of records systems—manual and automated.

The head of the agency has the responsibility of maintaining adequate

technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize the extent technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have a three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such access within the agency, for routine use as defined in § 308.4 and in the Peace Corps' published systems of records notices, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine uses as defined herein

and in the Peace Corps' systems of records notices or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accounting of removal of any records from storage areas shall be maintained at all times in the form directed by the Director, Administrative Services.

(6) The agency shall assure that all persons whose official duties require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three position combination lock, a metal filing cabinet equipped with a steel lock, a metal filing cabinet equipped with a steel lock bar secured with a General Services Administration (GSA) approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes of discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

§ 308.11 Accounting for disclosure of records.

Each office maintaining a system of records shall keep a written account of routine disclosures (see paragraphs (a) through (e) of this section) for all records within such system in the form prescribed by the Director, Office of Administrative Services. Disclosure made to employees of the agency in the normal course of their official duties or pursuant to the provisions of the Freedom of Information Act need not be accounted for. Such written account shall contain the following:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency.

(b) The name and address of the person or agency to whom the disclosure was made.

(c) Sufficient information to permit the construction of a listing of all disclosures at appropriate periodic intervals.

(d) The justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Act.

(e) For the purpose of this part, the system of accounting for disclosure is not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

§ 308.12 Contents of records systems.

(a) The agency shall maintain in any records contained in any records system hereunder only such information

Peace Corps

§ 308.13

about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or executive order.

(b) In situations in which the information may result in adverse determinations about such individual's rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(c) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 308.7 of this regulation.

(4) The effect on the individual, if any, of not providing all or part of the required or requested information.

(d) Records maintained in any system of records used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual: *Provided, however,* That the agency shall not be required to update or keep current retired records.

(e) Before disseminating any record about an individual to any person other than an agency as defined in 5 U.S.C. 552(e) or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), the agency shall make reasonable efforts to assure that such records are accurate, complete, timely and relevant for agency purposes.

(f) Under no circumstances shall the agency maintain any record about an individual with respect to or describing how such individual exercises rights

guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(g) In the event any record is disclosed as a result of the order of a presiding judge of a court of competent jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 308.13 Access to records.

(a) The Director, Administrative Services, shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations.

(b) Individuals requesting access to any record the agency maintains about him or her in a system of records shall be provided access to such records. Such requests shall be submitted in writing by mail, or in person during regular business hours, to the System Managers identified in the specific system notices. Systems maintained at overseas and domestic field offices may be addressed to the Country Director or Regional Service Center Manager. If assistance is needed, the Director, Office of Administrative Services, will provide agency addresses.

(c) Requests for records from more than one system of records shall be directed to the Director, Office of Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

(d) Requests for access to or copies of records should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required. If the individual wishes access to specific documents the request should identify or describe as nearly as possible such documents.

(e) A record may be disclosed to a representative of the person to whom a record relates who is authorized in writing to have access to the record by the person to whom it relates.

(f) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Peace Corps. Mailed or personal request for documents in storage which must be complied from more than one location, or which are otherwise not immediately available, will be acknowledged within ten working days, and the records requested will be provided as promptly thereafter as possible.

(g) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency, access to such records might have an adverse effect upon such individual. When such determination has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his or her professional judgment.

§ 308.14 Specific exemptions.

Records or portions of records in certain record systems specified in paragraphs (a) through (c) of this section shall be exempt from disclosure: *Provided, however,* That no such exemption shall apply to the provisions of § 308.12(a) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 308.12(b) (collecting information directly from the individual to whom it pertains); § 308.12(c) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 308.12(g) (notifying the subjects of records disclosed under compulsory court process); § 308.16(d)(3) (informing prior recipient of corrected or disputed records); § 308.16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material in any system of records considered classified and exempt from disclosure under provisions of section 552(b)(1) of the Freedom of Information Act. Agency systems of records now containing such material are: Legal Files—Staff, Volunteers and Appli-

cants; Security Records Peace Corps Staff/Volunteers and ACTION staff.

(1) Authority: 5 U.S.C. 552a (k)(1)

(2) Reasons: To protect information classified in the interest of national defense or foreign policy.

(b) Investigatory material compiled for the purposes of law enforcement: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of the identity of such source. Agency systems of records containing such investigatory material are: Discrimination Complaint Files; Employee Occupational Injury and Illness Reports; Legal Files—Staff, Volunteers and Applicants; Security Records—Peace Corps Staff/Volunteers and ACTION Staff.

(1) Authority: 5 U.S.C. 552a(k)(2)

(2) Reasons: To protect the identity of sources to whom proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

(c) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information: *Provided, however,* That such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his or her identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity. Agency systems of records containing such material are: Contractors and Consultant

Peace Corps

§ 308.14

Files; Discrimination Complaint Files; Legal Files—Staff, Volunteers and Applicants; Personal Service Contract Records—Peace Corps Staff/Volunteers and ACTION Staff; Staff Applicant and Personnel Records; Talent Bank; Volunteer Applicant and Service Record Systems.

(1) Authority: 5 U.S.C. 552a(k)(5)

(2) Reasons: To ensure the frankness of information used to determine whether Peace Corps Volunteers applicants and Peace Corps Staff applicants are qualified for service with the agency.

(d) Records in the Office of Inspector General Investigative Files and Records system of records are exempt from certain provisions to the extent provided hereinafter.

(1) To the extent that the system of records pertains to the enforcement of criminal laws, the Office of Inspector General Investigative Files and Records system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following sections: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A) through (F) relating to publishing a system notice setting the name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10), and (11) relating to dissemination and maintenance of records and (i) relating to criminal penalties. This system of records is also exempt from the provisions of § 308.11 through § 308.17 to the extent that the provisions of these sections conflict with this paragraph.

(i) Authority: 5 U.S.C. 552a(j)(2).

(ii) Reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigations, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources.

(2) To the extent that there may exist within this system of records investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the OIG Investigative Files and Records system of records is exempt from the following sections of the Privacy Act: (c)(3) relating to access to the disclosure accounting; (d) relating to access to records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment, and information as to the categories of sources or records; and (f) relating to developing agency rules for gaining access and making corrections. *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is also exempt from the provisions of § 308.11 through § 308.17 to the extent that the provisions of these sections conflict with this paragraph.

(i) Authority: 5 U.S.C. 552a(k)(2)

(ii) Reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

§ 308.15

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with Section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(F) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement systems.

(G) [Reserved]

(H) To prevent disclosure of law enforcement techniques and procedures.

(I) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

[50 FR 1844, Jan. 14, 1985, as amended at 58 FR 39657, July 26, 1993]

§ 308.15 Identification of requesters.

The agency shall require reasonable identification of all individuals who request access to records to assure that records are not disclosed to persons not entitled to such access.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a driver's license, etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation

22 CFR Ch. III (4-1-04 Edition)

or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(d) In the event a requester wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 308.16 Amendment of records and appeals with respect thereto.

(a) In the event an individual desires to request an amendment of his or her record, he or she may do so by submitting such written request to the Director, Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526. The Director, Administrative Services, shall provide assistance in preparing any amendment upon request and a written acknowledgment of receipt of such request within 10 working days after the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency decides to comply with the request within the 10 day period, no written acknowledgment is necessary: *Provided, however,* That a certification of the change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

(1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.

(2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of such refusal by the head of the agency or his or her designee. Such notice

Peace Corps

§ 308.17

shall include the name and business address of the reviewing official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of the Peace Corps.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the *Federal Personnel Manual* and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record it shall:

(1) Advise the individual in writing,

(2) Correct the record accordingly, and

(3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

(1) Advise the individual of its refusal and the reasons therefore,

(2) Inform the individual that he or she may request further review in accord with the provisions of these regulations, and

(3) Specify The name and address of the person to whom the request should be directed.

(f) In the event an individual requester disagrees with the initial agency determination, he or she may appeal such determination to the Director of the Peace Corps or his or her designee. Such request for review must be made within 30 days after receipt by the requester of the initial refusal to amend.

(g) If after review the Director or designee refuses to amend the record as requested he or she shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement in the record of the reasons for disagreeing with the decision of the agency; of the procedures for filing a statement of

disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of the dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request, the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded with 30 working days from the date of receipt of the review request: *Provided, however,* That the Director or designee may determine that fair and equitable review cannot be made within that time. If such circumstances occur, the individual shall be notified in writing of the additional time required and of the approximate date on which determination of the review is expected to be completed.

§ 308.17 Denial of access and appeals with respect thereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days after the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Act.

(a) In the event an individual desires to appeal any denial of access, he or she may do so in writing by addressing

§ 308.18

such appeal to the attention of the Director, Peace Corps, or designee identified in such denial. Such appeal should be addressed to Director, Peace Corps, c/o Office of Administrative Services, Room P-314, 806 Connecticut Avenue, NW., Washington, DC 20526.

(b) The Director, or designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 30 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial as provided in the Act.

§ 308.18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

PART 309—CLAIMS COLLECTION

Subpart A—General Provisions

Sec.

- 309.1 General purpose.
- 309.2 Scope.
- 309.3 Definitions.
- 309.4 Interest, penalties, and administrative costs.
- 309.5 Designation.

Subpart B—Salary Offset

- 309.6 Purpose.
- 309.7 Scope.
- 309.8 Applicability of regulations.
- 309.9 Waiver requests and claims to the General Accounting Office.
- 309.10 Notice requirements before offset.
- 309.11 Review.
- 309.12 Certification.
- 309.13 Voluntary repayment agreements as an alternative to salary offset.
- 309.14 Special review.
- 309.15 Notice of salary offset.
- 309.16 Procedures for salary offset.
- 309.17 Coordinating salary offset with other agencies.
- 309.18 Interest, penalties and administrative costs.
- 309.19 Refunds.
- 309.20 Request for the services of a hearing official from the creditor agency.

22 CFR Ch. III (4–1–04 Edition)

- 309.21 Non-waiver of rights by payments.

Subpart C—Tax Refund Offset

- 309.22 Applicability and scope.
- 309.23 Past-due legally enforceable debt.
- 309.24 Definitions.
- 309.25 Peace Corps' participation in the IRS tax refund offset program.
- 309.26 Procedures.
- 309.27 Referral of debts for offset.
- 309.28 Notice requirements before offset.

Subpart D—Administrative Offset

- 309.29 Applicability and scope.
- 309.30 Definitions.
- 309.31 General.
- 309.32 Demand for payment—notice.
- 309.33 Debtor's failure to respond.
- 309.34 Agency review.
- 309.35 Hearing.
- 309.36 Written agreement for repayment.
- 309.37 Administrative offset procedures.
- 309.38 Civil and Foreign Service Retirement Fund.
- 309.39 Jeopardy procedure.

Subpart E—Use of Consumer Reporting Agencies and Referrals to Collection Agencies

- 309.40 Use of consumer reporting agencies.
- 309.41 Referrals to collection agencies.

Subpart F—Compromise, Suspension or Termination and Referral of Claims

- 309.42 Compromise.
- 309.43 Suspending or terminating collection.
- 309.44 Referral of claims.

AUTHORITY: 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 22 U.S.C. 2503(b); 31 U.S.C. 3720A; 4 CFR parts 101–105; 5 CFR part 550; 26 CFR 301.6402–6T.

SOURCE: 58 FR 2978, Jan. 7, 1993, unless otherwise noted.

Subpart A—General Provisions

§ 309.1 General purpose.

This part prescribes the procedures to be used by the Peace Corps of the United States (Peace Corps) in the collection of claims owed to Peace Corps and to the United States.

§ 309.2 Scope.

(a) Applicability of Federal Claims Collection Standards (FCCS). Except as set forth in this part or otherwise provided by law, Peace Corps will conduct administrative actions to collect claims (including offset, compromise,

Peace Corps

§ 309.3

suspension, termination, disclosure and referral) in accordance with the Federal Claims Collection Standards of the General Accounting Office and the Department of Justice, 4 CFR parts 101 through 105.

(b) This part is not applicable to:

(1) Claims against any foreign country or any political subdivision thereof, or any public international organization.

(2) Claims where the Peace Corps Director (or designee) determines that the achievement of the purposes of the Peace Corps Act, as amended, 22 U.S.C. 2501 *et seq.*, or any other provision of law administered by the Peace Corps require a different course of action.

§ 309.3 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) *Agency* means:

(1) An Executive Agency as defined by section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of title 5, United States Code.

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Certification* means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(c) *Consumer reporting agency* means a reporting agency as defined in 31 U.S.C. 3701(a)(3).

(d) *Creditor agency* means the agency to which the debt is owed.

(e) The term *debt and claim* refers to an amount of money or property which has been determined by an appropriate agency official to be owed to the

United States from any person, organization or entity, except another Federal agency. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of monetary ceilings of the FCCS.

(f) *Delinquent debt* means any debt which has not been paid by the date specified by the Government in writing or in an applicable contractual agreement for payment or which has not been satisfied in accordance with a repayment agreement.

(g) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. These deductions are described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to: Social Security withholdings; Federal, State and local tax withholdings; retirement contributions; and life insurance premiums.

(h) *Employee* means a current or former employee of the Peace Corps or other agency, including a member of the Armed Forces or Reserve of the Armed Forces of the United States.

(i) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR parts 101 through 105.

(j) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. Except in the case of an administrative law judge, a hearing official may not be under the supervision or control of the Peace Corps when the Peace Corps is the creditor agency.

(k) *Paying agency* means the agency which employs the individual and authorizes the payment of his or her current pay. In some cases, the Peace Corps may be both the creditor and the paying agency.

(l) *Notice of intent to offset or notice of intent* means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and apprising

§ 309.4

the employee of certain administrative rights.

(m) *Notice of salary offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) *Payroll office* means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

(o) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction at one or more officially established pay intervals from the current pay account of an employee, without the employee's consent.

(p) *Salary Offset Coordination Officer* means an official designated by the Director who is responsible for coordinating debt collection activities for the Peace Corps.

(q) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt or debt related charge as permitted or required by law.

§ 309.4 Interest, penalties, and administrative costs.

(a) Except as otherwise provided by statute, contract or excluded in accordance with FCCS, Peace Corps will assess:

(1) Interest on unpaid claims in accordance with existing Treasury rules and regulations, unless the agency determines that a higher rate is necessary to protect the interests of the United States.

(2) Penalty charges at a rate of 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) Administrative charges to cover the costs of processing and handling the debt beyond the payment due date.

(b) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(c) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative

22 CFR Ch. III (4–1–04 Edition)

cost charges, second to accrued interest, and then to outstanding principal.

(d) Waiver. Peace Corps will consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 4 CFR 102.13(g).

§ 309.5 Designation.

The Chief Financial Officer and his or her delegates, or any person discharging the functions presently vested in the Chief Financial Officer, are designated to perform all the duties for which the Director is responsible under the foregoing statutes and Joint Regulations: Provided, however, That no compromise of a claim shall be effected or collection action terminated except with the concurrence of the General Counsel. No such concurrence shall be required with respect to the compromise or termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

Subpart B—Salary Offset

§ 309.6 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97-365), is to provide a comprehensive statutory approach to the collection of debts due the United States Government. This subpart implements section 5 thereof which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. No claim may be collected by salary offset if the debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 309.7 Scope.

(a) This subpart provides Peace Corps' procedures for the collection by salary offset of a Federal employee's pay to satisfy certain past due debts owed the United States Government.

(b) This subpart applies to collections by the Peace Corps from:

(1) Federal employees who owe debts to the Peace Corps; and

Peace Corps

§ 309.10

(2) Employees of the Peace Corps who owe debts to other agencies.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*; 4 CFR parts 101 through 105).

§ 309.8 Applicability of regulations.

The provisions of this subpart are to be followed in instances where:

(a) The Peace Corps is owed a debt by an individual currently employed by another agency;

(b) The Peace Corps is owed a debt by an individual who is a current employee of the Peace Corps; or

(c) The Peace Corps currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Peace Corps will offset the debtor-employee's salary in accordance with these regulations.

§ 309.9 Waiver requests and claims to the General Accounting Office.

The provisions of this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. This

subpart also does not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 309.10 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency first provides the employee with written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When Peace Corps is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available. The written notice will state:

(1) That Peace Corps has reviewed the records relating to the claim and has determined that a debt is owed, its origin and nature, and the amount of the debt;

(2) The intention of Peace Corps to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Peace Corps' policy concerning interest, penalties and administrative costs, including a statement that such assessments must be made unless excused in accordance with § 309.4(d);

(5) The employee's right to inspect and copy all records of the Peace Corps pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by a hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Peace Corps) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 309.11;

(7) If not previously provided, the opportunity (under terms agreeable to

§ 309.11

22 CFR Ch. III (4–1–04 Edition)

the Peace Corps) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency (4 CFR 102.2(e));

(8) The name, address and telephone number of an officer or employee of the Peace Corps who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for hearing within 15 calendar days after delivery of the notice of intent to offset will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Peace Corps will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of 5 U.S.C., 5 CFR 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§3729–3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. sections 286, 287, 1001, and 1002 or any other applicable authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Peace Corps is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 309.11 Review.

(a) *Request for review.* Except as provided in paragraph (b) of this section, an employee who desires a review concerning the existence or amount of the debt or the proposed offset schedule must send a request to the office designated in the notice of intent. See § 309.10(a)(8). The request for review must be received by the designated office not later than 15 calendar days after the date of delivery of the notice as provided in § 309.10(a). The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it. The employee must also specify whether an oral hearing or a review of the documentary evidence is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.*

(1) If the employee files a petition for a review after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the designated office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control, or because of

Peace Corps

§ 309.11

a failure to receive the notice of the filing deadline (unless the employee has actual knowledge of the filing deadline).

(2) An employee waives the right to a review, and will have his or her disposable pay offset in accordance with Peace Corps' offset schedule, if the employee fails to file a request for a hearing unless such failure is excused as provided in paragraph (b)(1) of this section.

(3) If the employee fails to appear at an oral hearing of which he or she was notified, unless the hearing official determines failure to appear was due to circumstances beyond the employee's control, his or her appeal will be decided on the basis of the documents then available to the hearing official.

(c) *Representation at the hearing.* The creditor agency may be represented by a representative of its choice. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Peace Corps records related to the debt.*

(1) An employee who intends to inspect or copy creditor agency records related to the debt in accordance with § 309.10(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be sent within 15 calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, copies of such records shall be sent to the employee.

(e) *Hearing official.* Unless the Peace Corps appoints an administrative law judge to conduct the hearing, the Peace Corps must obtain a hearing official who is not under the supervision or control of the Peace Corps.

(f) *Obtaining the services of a hearing official when the Peace Corps is the creditor agency.*

(1) When the debtor is not a Peace Corps employee, and in the event that the Peace Corps cannot provide a

prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Peace Corps may contact an agent of the paying agency designated in appendix A to part 581 of title 5, Code of Federal Regulations or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Peace Corps employee, the Peace Corps may contact any agent of another agency designated in appendix A to part 581 of title 5, Code of Federal Regulations or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.* (1) If the employee requests a review, the hearing official or administrative law judge shall notify the employee of the form of the review to be provided. If an oral hearing is authorized, the notice shall set forth the date, time and location of the hearing. If the review will be on documentary evidence, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date, after which the record will be closed. This date shall give the employee reasonable time (not less than 14 calendar days) to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

§ 309.12

22 CFR Ch. III (4-1-04 Edition)

(3) *Paper review.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. See 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60 day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative upon showing of good cause. Both parties shall be given the time and place of the new hearing.

§ 309.12 Certification.

(a) The Peace Corps salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a review; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Peace Corps' regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The amount and date of any lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date the action was taken and that it was taken pursuant to 5 U.S.C. 5514.

§ 309.13 Voluntary repayment agreements as an alternative to salary offset.

(a) In response to a notice of intent, an employee may propose a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within 15 calendar days after receipt of the notice of intent.

(b) When the Peace Corps is the creditor agency, in response to a timely proposal by the debtor the agency will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Peace Corps decides that the proposed repayment agreement is unacceptable, the employee will have 15 calendar days from the date he or

Peace Corps

§ 309.16

she received notice of the decision to file a petition for a review.

(d) If the Peace Corps decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and a designated agency official.

§ 309.14 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement, may at any time request a special review by the creditor agency of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs for food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse and dependents indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in significant financial hardship to the employee.

(d) The Peace Corps shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes significant financial hardship on the employee. The Peace Corps shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Peace Corps salary offset coordination officer shall provide a new certification to the paying agency.

§ 309.15 Notice of salary offset.

(a) Upon receipt of proper certification of the creditor agency, the Peace Corps payroll office will send the employee a written notice of salary offset. Such notice shall, at a minimum:

- (1) Contain a copy of the certification received from the creditor agency; and
- (2) Advise the employee that salary offset will be initiated at the next officially established pay interval.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 309.16 Procedures for salary offset.

(a) The Director (or designee) shall coordinate salary deductions under this subpart.

(b) The payroll office shall determine the amount of the employee's disposable pay and will implement the salary offset.

(c) Deductions shall begin within 3 official pay periods following receipt by the payroll office of certification.

(d) Types of collection. (1) *Lump-sum payment*. If the amount of the debt is equal to or less than 15 percent of disposable pay, such debt generally will be collected in one lump-sum payment.

(2) *Installment deductions*. Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period may not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check*. A lump-sum deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources*. Whenever an employee subject to salary offset is separated from the Peace Corps, and the balance of the debt cannot be liquidated by offset of

the final salary check, the Peace Corps, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to the Peace Corps.* For Peace Corps employees, debts owed to the agency generally take precedence over debts owed to other agencies. In the event that a debt to the Peace Corps is certified while an employee is subject to a salary offset to repay another agency, the payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Peace Corps can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Peace Corps' debt. When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

§ 309.17 Coordinating salary offset with other agencies.

(a) *Responsibility of the Peace Corps as the creditor agency.*

(1) The Director or Director's designee shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a federal employee; and

(ii) Prescribe such practices and procedures as may be necessary to carry out the intent of this subpart.

(2) Designate a salary offset coordination officer who will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 309.10;

(ii) Ensuring that each certification of debt sent to a paying agency is consistent with the requirements of § 309.12;

(iii) Obtaining hearing officials from other agencies pursuant to § 309.11(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) Request recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Peace Corps must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payments are due, the date the Government's right to collect the debt first accrued, and that the Peace Corps' regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and give the dates the actions were taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iii) Except as otherwise provided in paragraph (a)(3) of this section, submit a debt claim containing the information specified in paragraphs (a)(3) (i) and (ii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(iv) If the employee is in the process of separating, the Peace Corps must submit its debt claim to the employee's paying agency for collection as provided in § 309.16. The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(4) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Peace Corps must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

Peace Corps

§ 309.21

(v) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Peace Corps may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset to collect the debt (See 31 U.S.C. 3716 and 41 CFR 102.4).

(4) When an employee transfers to another paying agency, the Peace Corps need not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to continue the collection. The Peace Corps must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is continued by the new paying agency.

(b) *Responsibility of the Peace Corps as the paying agency.*

(1) *Complete claim.* When the Peace Corps receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The employee must receive written notice that the Peace Corps has received a certified debt claim from the creditor agency (including the amount) and written notice of the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Peace Corps receives an incomplete certification of debt from a creditor agency, the Peace Corps must return the debt claim with notice that procedures under 5 U.S.C. 5514 and this subpart must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Peace Corps is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Peace Corps, the employee transfers to another agency before the debt is collected in full, the Peace Corps must certify the total amount collected on the debt. One copy of the

certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 309.18 Interest, penalties and administrative costs.

The Peace Corps shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR 102.13.

§ 309.19 Refunds.

(a) In instances where the Peace Corps is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States; or

(2) An administrative or judicial order directs the Peace Corps to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subpart shall not bear interest.

§ 309.20 Request for the services of a hearing official from the creditor agency.

(a) The Peace Corps will provide a hearing official upon request of the creditor agency when the debtor is employed by the Peace Corps and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Peace Corps will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

§ 309.21 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not

§ 309.22

be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of a written contract or law unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 309.22 Applicability and scope.

This subpart implements 31 U.S.C. 3720A which authorizes the Internal Revenue Service (IRS) to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

§ 309.23 Past-due legally enforceable debt.

For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(a) Except in the case of a judgment debt, has been delinquent for at least 3 months and will not have been delinquent more than 10 years at the time offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514;

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Peace Corps against amounts payable to the debtor by the Peace Corps;

(d) With respect to which the Peace Corps has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by the Peace Corps to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100;

(f) Is at least \$25; and

(g) With respect to which the Peace Corps has notified or has made a rea-

22 CFR Ch. III (4–1–04 Edition)

sonable attempt to notify the taxpayer that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax. For the purposes of paragraph (g) of this section, in order to make a reasonable attempt to notify the debtor, Peace Corps must use such address for the debtor as may be obtainable from IRS pursuant to section 6103(m)(2), (m)(4), or (m)(5) of the Internal Revenue Code.

§ 309.24 Definitions.

For purpose of this subpart: *Commissioner* means the Commissioner of the Internal Revenue Service.

Memorandum of Understanding (MOU or agreement) means the agreement between the IRS and the Peace Corps which prescribes the specific conditions the Peace Corps must meet before the IRS will accept referrals for tax refund offsets.

§ 309.25 Peace Corps' participation in the IRS tax refund offset program.

(a) The Peace Corps will provide information to the IRS within the time frame prescribed by the Commissioner of the IRS to enable the Commissioner to make a final determination as to the Peace Corps' participation in the tax refund offset program. Such information will include a description of:

(1) The size and age of the Peace Corps' inventory of delinquent debts;

(2) The prior collection efforts that the inventory reflects; and

(3) The quality controls the Peace Corps maintains to assure that any debt that may be submitted for tax refund offset will be valid and enforceable.

(b) In accordance with the timetable specified by the Commissioner, the Peace Corps will submit test magnetic media to the IRS, in such form and containing such data as the IRS shall specify.

(c) The Peace Corps will provide the IRS with a telephone number which the IRS may furnish to individuals whose refunds have been offset to obtain information concerning the offset.

Peace Corps

§ 309.28

§ 309.26 Procedures.

(a) The Chief Financial Officer (or designee) shall be the point of contact with the IRS for administrative matters regarding the offset program.

(b) The Peace Corps shall ensure that:

(1) Only those past-due legally enforceable debts described in § 309.23 are forwarded to the IRS for offset; and

(2) The procedures prescribed in the MOU between the Peace Corps and the IRS are followed in developing past-due debt information and submitting the debts to the IRS.

(c) The Peace Corps shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic media as prescribed by the IRS. Such notification shall contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code) of the individual who is responsible for the debt;

(2) The dollar amount of such past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement accompanying each magnetic tape certifying that, with respect to each debt reported on the tape, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 309.23.

(d) The Peace Corps shall promptly notify the IRS to correct data submitted when the Peace Corps:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on such debt; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the Peace Corps shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 309.27 Referral of debts for offset.

(a) The Peace Corps shall refer to the IRS for collection by tax refund offset, from refunds otherwise payable, only such past-due legally enforceable debts owed to the Peace Corps:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the IRS a magnetic tape pursuant to § 309.26(c), together with a written certification that the conditions or requirements specified in 26 CFR 301.6402-6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The certification shall be in the form specified in the MOU.

§ 309.28 Notice requirements before offset.

(a) The Peace Corps must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any refund of overpayment of tax.

(b) The Peace Corps shall provide a mailing address for forwarding any correspondence and a contact name and telephone number for any questions.

(c) The Peace Corps shall give the individual debtor at least 60 days from the date of the notification to present evidence that all or part of the debt is not past due or legally enforceable. The Peace Corps shall consider the evidence presented by the individual and shall make a determination whether any part of such debt is past due and legally enforceable. For purposes of this subpart, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual shall bar referral of the debt to the IRS.

(d) Notification given to a debtor pursuant to paragraphs (a), (b), and (c) of this section shall advise the debtor of how he or she may present evidence to the Peace Corps that all or part of the debt is not past due or legally enforceable. Such evidence may not be

referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the Peace Corps, and the determination required under paragraph (c) of this section has been made by an official or employee of the Peace Corps, any unresolved dispute with the debtor as to whether all or part of the debt is past due or legally enforceable must be referred to the Peace Corps for ultimate administrative disposition, and the Peace Corps must directly notify the debtor of its determination.

Subpart D—Administrative Offset

§ 309.29 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Peace Corps. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR part 102.

§ 309.30 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 309.31 General.

(a) The Director of the Peace Corps (or designee) will determine the feasibility of collection by administrative offset on a case-by-case basis for each

claim established. The Director (or designee) will consider the following issues in making a determination to collect a claim by administrative offset:

(1) Can administrative offset be accomplished?

(2) Is administrative offset practical and legal?

(3) Does administrative offset best serve and protect the interest of the U.S. Government?

(4) Is administrative offset appropriate given the debtor's financial condition?

(b) The Director (or designee) may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director (or designee) may request another agency that holds funds payable to a Peace Corps debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this subpart may not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

(f) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

Peace Corps

§ 309.34

§ 309.32 Demand for payment—notice.

(a) Whenever possible, the Peace Corps will seek written consent from the debtor to initiate immediate collection before starting the formal notification process.

(b) In cases where written agreement to collect cannot be obtained from the debtor, a formal notification process shall be followed, 4 CFR 102.2. Prior to collecting a claim by administrative offset, the Peace Corps shall send to the debtor, by certified or registered mail with return receipt, written demands for payment in terms which inform the debtor of the consequences of failure to cooperate. A total of 3 progressively stronger written demands at not more than 30 day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary. In determining the timing of the demand letters, the Peace Corps should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the final determination of the fact and the amount of the debt. When appropriate to protect the Government's interests (for example, to prevent the statute of limitations from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(c) Before offset is made, a written notice will be sent to the debtor. This notice will include:

- (1) The nature and amount of the debt;
- (2) The date when payment is due (not less than 30 days from the date of mailing or hand delivery of the notice);
- (3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;
- (4) Any provision for interest, late payment penalties and administrative

charges, if payment is not received by the due date;

(5) The possible reporting of the claim to consumer reporting agencies and the possibility that Peace Corps will forward the claim to a collection agency;

(6) The right of the debtor to inspect and copy Peace Corps' records related to the claim;

(7) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described below, to request an oral hearing from the Peace Corps;

(8) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way; and

(9) In appropriate cases, the right of the debtor to request a waiver.

(d) Claims for payment of travel advances and employee training expenses require notification prior to administrative offset as described in this section. Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

§ 309.33 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 309.32 (c) by the proposed effective date specified in the notice, the Peace Corps may take further action under this part or the FCCS under 4 CFR parts 101 through 105. Peace Corps may collect by administrative offset if the debtor:

(a) Has not made payment by the payment due date;

(b) Has not requested a review of the claim within the agency as set out in § 309.34; or

(c) Has not made an arrangement for payment by the payment due date.

§ 309.34 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Peace Corps official who provided notification within 30 calendar days of the receipt of the written notice described in § 309.32(c).

§ 309.35

22 CFR Ch. III (4–1–04 Edition)

(b) The Peace Corps will provide a copy of the record to the debtor and advise him/her to furnish available evidence to support his or her position. Upon receipt of the evidence, the Peace Corps will review the written record of indebtedness and inform the debtor of its findings.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's accounts maintained by the Peace Corps may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 309.35 Hearing.

(a) A debtor will be provided a reasonable opportunity for an oral hearing when:

(1)(i) By statute, consideration must be given to a request to waive the indebtedness;

(ii) The debtor requests waiver of the indebtedness; and

(iii) The waiver determination rests on an issue of creditability or veracity; or

(2) The debtor requests reconsideration and the Peace Corps determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

(b) In cases where an oral hearing is provided to the debtor, the Peace Corps will conduct the hearing, and provide the debtor with a written decision.

§ 309.36 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Peace Corps has discretion and should use sound judgment to determine whether to accept a repayment agreement in place of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, the Peace Corps will not accept a repayment agreement

in place of offset unless the debtor is able to establish that offset would cause undue financial hardship or be unjust. No repayment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Peace Corps' request for the statement. At the Peace Corps' option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 CFR 5.3.

§ 309.37 Administrative offset procedures.

(a) If the debtor does not exercise the right to request a review within the time specified in § 309.34, or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with this subpart without further notice.

(b) *Travel advance.* The Peace Corps will deduct outstanding advances provided to Peace Corps travelers from other amounts owed the traveler by the agency whenever possible and practicable. Monies owed by an employee for outstanding travel advances which cannot be deducted from other travel amounts due that employee, will be collected through salary offset as described in subpart B of this part.

(c) *Volunteer allowances.* The Peace Corps may deduct through administrative offset amounts owed the U.S. Government by Volunteers and Trainees from the readjustment allowance account.

(1) Overseas posts will obtain written consent from Volunteers or Trainees who are indebted to the agency upon close of service or termination, to deduct amounts owed from their readjustment allowances. Posts will immediately submit the written consent to Volunteer and Staff Payroll Services Division (VSPS).

(2) In cases where written consent from indebted Volunteers or Trainees

Peace Corps

§ 309.39

cannot be obtained, overseas posts will immediately report the documented debts to VSPS. VSPS may then initiate offset against the readjustment allowance. Prior to offset action, VSPS will notify the debtor Volunteer or Trainee of their rights as required in § 309.32.

(d) *Requests for offset to other Federal agencies.* The Director or his or her designee may request that a debt owed to the Peace Corps be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Peace Corps, as creditor, will certify in writing to the Federal agency holding funds of the debtor;

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the Peace Corps has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(e) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Peace Corps be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Peace Corps shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by the Peace Corps that collection by offset against funds payable by the Peace Corps would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 309.38 Civil and Foreign Service Retirement Fund.

(a) Unless otherwise prohibited by law, Peace Corps may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency. The requests for administrative offset will certify in writing the following:

(1) The debtor owes the United States a debt and the amount of the debt;

(2) The Peace Corps has complied with applicable regulations and procedures;

(3) The Peace Corps has followed the requirements of the FCCS as described in this subpart.

(b) Once Peace Corps decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset will be initiated prior to expiration of the statute of limitations.

(c) If Peace Corps collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, Peace Corps shall act promptly to modify or terminate its request for offset.

(d) This section does not require or authorize the fund servicing agency to review the merits of Peace Corps' determination relative to the debt.

§ 309.39 Jeopardy procedure.

The Peace Corps may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 309.32(c) of this subpart if failure to take the offset would substantially

jeopardize the Peace Corps' ability to collect the debt, and the time available before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Peace Corps shall be promptly refunded.

Subpart E—Use of Consumer Reporting Agencies and Referrals to Collection Agencies

§ 309.40 Use of consumer reporting agencies.

(a) The Peace Corps may report delinquent debts to consumer reporting agencies (see 31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the claim; and

(3) The Peace Corps program or activity under which the claim arose.

§ 309.41 Referrals to collection agencies.

(a) Peace Corps has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and the FCCS (4 CFR 102.6).

(b) Peace Corps will use private collection agencies where it determines that their use is in the best interest of the Government. Where Peace Corps determines that there is a need to contract for collection services, the contract will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter to the Department of Justice for litigation or to take any other action under this Part will be retained by the Peace Corps;

(2) Contractors are subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to strictly account for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable Peace Corps to determine whether to pursue collection through litigation or to terminate collection;

(5) The contractor must agree to provide any data in its files relating to paragraphs (a) (1), (2) and (3) of section 105.2 of the Federal Claims Collection Standards upon returning the account to Peace Corps for subsequent referral to the Department of Justice for litigation.

(c) Peace Corps will not use a collection agency to collect a debt owed by a current employed or retired Federal employee, if collection by salary or annuity offset is available.

Subpart F—Compromise, Suspension or Termination and Referral of Claims

§ 309.42 Compromise.

Peace Corps may attempt to effect compromise in accordance with the standards set forth in part 103 of the FCCS (4 CFR part 103).

§ 309.43 Suspending or terminating collection.

Suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the FCCS (4 CFR 104)

§ 309.44 Referral of claims.

Claims on which an aggressive collection action has been taken and which cannot be collected, compromised or on

Peace Corps

Pt. 310

which collection action cannot be suspended or terminated under parts 103 and 104 of the FCCS (4 CFR parts 103 and 104), shall be referred to the General Accounting Office or the Department of Justice, as appropriate, in accordance with the procedures set forth in part 105 of the FCCS (4 CFR part 105).

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

Sec.

310.25 How is this part organized?

310.50 How is this part written?

310.75 Do terms in this part have special meanings?

Subpart A—General

310.100 What does this part do?

310.105 Does this part apply to me?

310.110 What is the purpose of the non-procurement debarment and suspension system?

310.115 How does an exclusion restrict a person's involvement in covered transactions?

310.120 May we grant an exception to let an excluded person participate in a covered transaction?

310.125 Does an exclusion under the non-procurement system affect a person's eligibility for Federal procurement contracts?

310.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?

310.140 How do I know if a person is excluded?

310.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

310.200 What is a covered transaction?

310.205 Why is it important to know if a particular transaction is a covered transaction?

310.210 Which nonprocurement transactions are covered transactions?

310.215 Which nonprocurement transactions are not covered transactions?

310.220 Are any procurement contracts included as covered transactions?

310.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

310.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

310.305 May I enter into a covered transaction with an excluded or disqualified person?

310.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?

310.315 May I use the services of an excluded person as a principal under a covered transaction?

310.320 Must I verify that principals of my covered transactions are eligible to participate?

310.325 What happens if I do business with an excluded person in a covered transaction?

310.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

310.335 What information must I provide before entering into a covered transaction with the Peace Corps?

310.340 If I disclose unfavorable information required under §310.335, will I be prevented from participating in the transaction?

310.345 What happens if I fail to disclose the information required under §310.335?

310.350 What must I do if I learn of the information required under §310.335 after entering into a covered transaction with the Peace Corps?

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

310.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

310.360 What happens if I fail to disclose the information required under §310.355?

310.365 What must I do if I learn of information required under §310.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions

310.400 May I enter into a transaction with an excluded or disqualified person?

Pt. 310

22 CFR Ch. III (4–1–04 Edition)

- 310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 310.410 May I approve a participant's use of the services of an excluded person?
- 310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
- 310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 310.425 When do I check to see if a person is excluded or disqualified?
- 310.430 How do I check to see if a person is excluded or disqualified?
- 310.435 What must I require of a primary tier participant?
- 310.440 What method do I use to communicate those requirements to participants?
- 310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 310.450 What action may I take if a primary tier participant fails to disclose the information required under §310.335?
- 310.455 What may I do if a lower tier participant fails to disclose the information required under §310.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 310.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 310.505 Who uses the EPLS?
- 310.510 Who maintains the EPLS?
- 310.515 What specific information is in the EPLS?
- 310.520 Who places the information into the EPLS?
- 310.525 Whom do I ask if I have questions about a person in the EPLS?
- 310.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 310.600 How do suspension and debarment actions start?
- 310.605 How does suspension differ from debarment?
- 310.610 What procedures does the Peace Corps use in suspension and debarment actions?
- 310.615 How does the Peace Corps notify a person of a suspension and debarment action?
- 310.620 Do federal agencies coordinate suspension and debarment actions?
- 310.625 What is the scope of a suspension or debarment action?
- 310.630 May the Peace Corps impute the conduct of one person to another?
- 310.635 May the Peace Corps settle a debarment or suspension action?

- 310.640 May a settlement include a voluntary exclusion?
- 310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

Subpart G—Suspension

- 310.700 When may the suspending official issue a suspension?
- 310.705 What does the suspending official consider in issuing a suspension?
- 310.710 When does a suspension take effect?
- 310.715 What notice does the suspending official give me if I am suspended?
- 310.720 How may I contest a suspension?
- 310.725 How much time do I have to contest a suspension?
- 310.730 What information must I provide to the suspending official if I contest a suspension?
- 310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 310.740 Are suspension proceedings formal?
- 310.745 How is fact-finding conducted?
- 310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 310.755 When will I know whether the suspension is continued or terminated?
- 310.760 How long may my suspension last?

Subpart H—Debarment

- 310.800 What are the causes for debarment?
- 310.805 What notice does the debarring official give me if I am proposed for debarment?
- 310.810 When does a debarment take effect?
- 310.815 How may I contest a proposed debarment?
- 310.820 How much time do I have to contest a proposed debarment?
- 310.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 310.835 Are debarment proceedings formal?
- 310.840 How is fact-finding conducted?
- 310.845 What does the debarring official consider in deciding whether to debar me?
- 310.850 What is the standard of proof in a debarment action?
- 310.855 Who has the burden of proof in a debarment action?
- 310.860 What factors may influence the debarring official's decision?
- 310.865 How long may my debarment last?
- 310.870 When do I know if the debarring official debars me?
- 310.875 May I ask the debarring official to reconsider a decision to debar me?
- 310.880 What factors may influence the debarring official during reconsideration?

Peace Corps

§ 310.75

310.885 May the debarring official extend a debarment?

Subpart I—Definitions

310.900 Adequate evidence.
 310.905 Affiliate.
 310.910 Agency.
 310.915 Agent or representative.
 310.920 Civil judgment.
 310.925 Conviction.
 310.930 Debarment.
 310.935 Debarring official.
 310.940 Disqualified.
 310.945 Excluded or exclusion.
 310.950 Excluded Parties List System.
 310.955 Indictment.
 310.960 Ineligible or ineligibility.
 310.965 Legal proceedings.
 310.970 Nonprocurement transaction.
 310.975 Notice.
 310.980 Participant.
 310.985 Person.
 310.990 Preponderance of the evidence.
 310.995 Principal.
 310.100 Respondent.

310.1005 State.
 310.1010 Suspending official.
 310.1015 Suspension.
 310.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Reserved

APPENDIX TO PART 310—COVERED TRANSACTIONS

AUTHORITY: 22 U.S.C. 2503; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 68 FR 66588 and 66589, Nov. 26, 2003, unless otherwise noted.

§ 310.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about this rule.
B	the types of Peace Corps transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Peace Corps officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, D, E, F, G and I.
(5) a debarring official	A, B, D, E, F, H and I.
(6) a (n) Peace Corps official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved	J.

§ 310.50 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text,

often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the Peace Corps.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which the Peace Corps enforces an exclusion under this part.

§ 310.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by

§ 310.100

a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ 310.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for Peace Corps nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

§ 310.105 Does this part apply to me?

Portions of this part (see table at § 310.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the Peace Corps has initiated a debarment or suspension action);

(c) Peace Corps debarring or suspending official; or

(d) Peace Corps official who is authorized to enter into covered transactions with non-Federal parties.

22 CFR Ch. III (4–1–04 Edition)

§ 310.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 310.115 How does an exclusion restrict a person’s involvement in covered transactions?

With the exceptions stated in §§ 310.120, 310.315, and 310.420, a person who is excluded by the Peace Corps or any other Federal agency may not:

(a) Be a participant in a(n) Peace Corps transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency’s regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ 310.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The Peace Corps Director or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Peace Corps Director or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

Peace Corps

§ 310.205

§ 310.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 310.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

§ 310.140 How do I know if a person is excluded?

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 310.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) Peace Corps transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ 310.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ 310.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you

§ 310.210

22 CFR Ch. III (4–1–04 Edition)

have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 310.310 or § 310.415; or

(2) A(n) Peace Corps official obtains an exception from the Peace Corps Director or designee to allow you to be involved in the transaction, as permitted under § 310.120.

§ 310.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 310.970, are covered transactions unless listed in § 310.215. (See appendix to this part.)

§ 310.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the Peace Corps needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the Peace Corps specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ 310.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 310.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of a(n) Peace Corps official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

§ 310.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§ 310.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the *EPLS*; or
- (b) Collecting a certification from that person if allowed by this rule; or
- (c) Adding a clause or condition to the covered transaction with that person.

§ 310.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Peace Corps grants an exception under § 310.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 310.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Peace Corps grants an exception under § 310.120.

§ 310.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Peace Corps grants an exception under § 310.120.

§ 310.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

§ 310.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 310.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 310.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a

§ 310.335

22 CFR Ch. III (4–1–04 Edition)

covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

§ 310.335 What information must I provide before entering into a covered transaction with the Peace Corps?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Peace Corps office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 310.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 310.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 310.340 If I disclose unfavorable information required under § 310.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 310.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ 310.345 What happens if I fail to disclose information required under § 310.335?

If we later determine that you failed to disclose information under § 310.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the

terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 310.350 What must I do if I learn of information required under § 310.335 after entering into a covered transaction with the Peace Corps?

At any time after you enter into a covered transaction, you must give immediate written notice to the Peace Corps office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 310.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 310.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 310.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 310.360 What happens if I fail to disclose the information required under § 310.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ 310.365 What must I do if I learn of information required under § 310.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

Peace Corps

§ 310.430

(a) You failed to disclose information earlier, as required by § 310.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 310.355.

Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions

§ 310.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 310.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 310.120.

§ 310.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 310.120.

§ 310.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions,

however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 310.120.

§ 310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 310.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 310.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ 310.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the *EPLS* when you take any action listed in § 310.425.

(b) You must review information that a participant gives you, as required by § 310.335, about its status or the status of the principals of a transaction.

§ 310.435

§ 310.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 310.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

§ 310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 310.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

22 CFR Ch. III (4–1–04 Edition)

§ 310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 310.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 310.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 310.505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § 310.430.

(b) Participants also may, but are not required to, use the *EPLS* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 310.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *EPLS* is available to the general public.

§ 310.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS*. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 310.515 What specific information is in the EPLS?

(a) At a minimum, the *EPLS* indicates—

Peace Corps

§ 310.605

(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the *EPLS* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 310.520 Who places the information into the *EPLS*?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the *EPLS*:

(a) Information required by § 310.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 310.525 Whom do I ask if I have questions about a person in the *EPLS*?

If you have questions about a person in the *EPLS*, ask the point of contact for the Federal agency that placed the person's name into the *EPLS*. You may find the agency point of contact from the *EPLS*.

§ 310.530 Where can I find the *EPLS*?

(a) You may access the *EPLS* through the Internet, currently at <http://epls.arnet.gov>.

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 310.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debaring official for consideration, if appropriate.

§ 310.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .

A debaring official . . .

(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.

Imposes debarment for a specified period as a final determination that a person is not presently responsible.

A suspending official . . .	A debarring official . . .
(b) Must— (1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and (2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest. (c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment. Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 310.610 What procedures does the Peace Corps use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

§ 310.615 How does the Peace Corps notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

- (1) You or your identified counsel; or
- (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 310.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 310.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

- (a) Your suspension or debarment constitutes suspension or debarment of

all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

- (1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or
- (2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

- (1) Officially names the affiliate in the notice; and
- (2) Gives the affiliate an opportunity to contest the action.

§ 310.630 May the Peace Corps impute conduct of one person to another?

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

Peace Corps

§310.715

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§310.635 May the Peace Corps settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§310.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§310.645 Do other Federal agencies know if the Peace Corps agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§310.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under §310.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under §310.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§310.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§310.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§310.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

§ 310.720

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § 310.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other Peace Corps procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 310.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 310.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

22 CFR Ch. III (4–1–04 Edition)

§ 310.730 What information must I provide to the suspending official if I contest a suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Peace Corps may seek further criminal, civil or administrative action against you, as appropriate.

§ 310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local

Peace Corps

§310.760

prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§310.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§310.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Peace Corps agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained

in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§310.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§310.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 310.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 310.120;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Fed-

eral agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 310.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 310.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 310.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 310.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 310.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Peace Corps procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and non-procurement programs and activities.

§ 310.810 When does a debarment take effect?

A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 310.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your

Peace Corps

§ 310.840

representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 310.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 310.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 310.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Peace Corps may seek further criminal, civil or administrative action against you, as appropriate.

§ 310.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 310.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 310.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

§ 310.845

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Peace Corps agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 310.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 310.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 310.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 310.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 310.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

22 CFR Ch. III (4–1–04 Edition)

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 310.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and

Peace Corps

§310.875

recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§310.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in §310.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§310.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to §310.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§310.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider

§ 310.880

the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 310.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

§ 310.885 May the debarring official extend a debarment?

- (a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.
- (b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.
- (c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 310.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 310.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

22 CFR Ch. III (4–1–04 Edition)

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 310.910 Agency.

Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

§ 310.915 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

§ 310.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 310.925 Conviction.

Conviction means—

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Peace Corps

§ 310.980

§ 310.930 Debarment.

Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 310.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

- (1) The agency head; or
 - (2) An official designated by the agency head.
- (b) [Reserved]

§ 310.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

- (a) The Davis-Bacon Act (40 U.S.C. 276(a));
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 310.945 Excluded or exclusion.

Excluded or exclusion means—

- (a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
- (b) The act of excluding a person.

§ 310.950 Excluded Parties List System

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, “List of Parties Excluded or Disqualified from Federal Procurement and

Nonprocurement Programs,” so long as published.

§ 310.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 310.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 310.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 310.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 310.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 310.615.)

§ 310.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including

§ 310.985

an agent or representative of a participant.

§ 310.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 310.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 310.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 310.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ 310.1005 State.

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

22 CFR Ch. III (4–1–04 Edition)

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 310.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ 310.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 310.1020 Voluntary exclusion or voluntarily excluded.

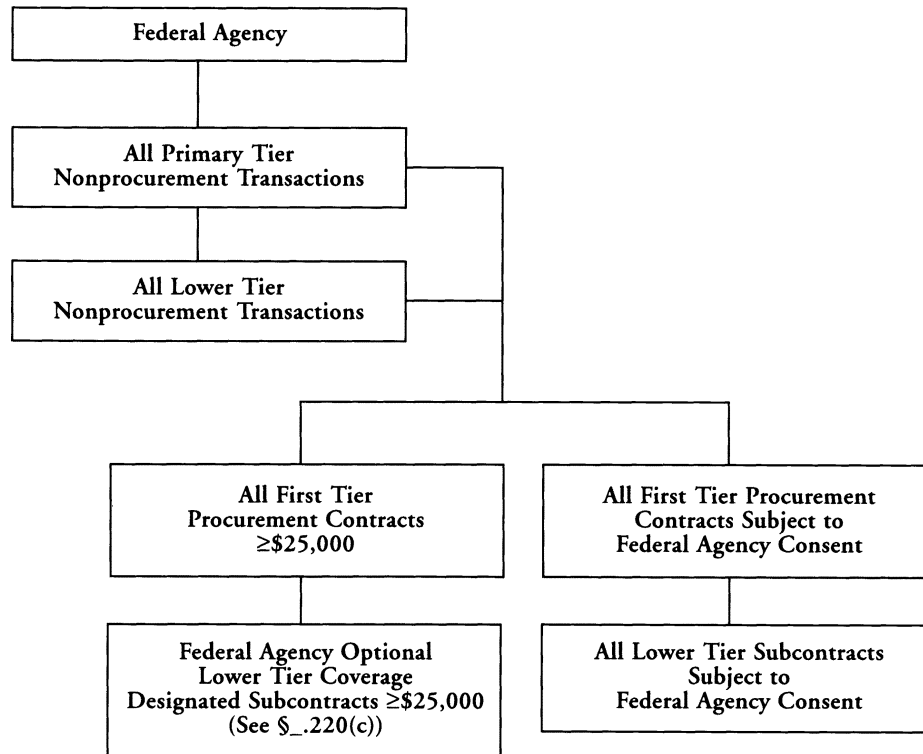
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Subpart J—[Reserved]

APPENDIX TO PART 310—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 311—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

- Sec.
 311.100 Conditions on use of funds.
 311.105 Definitions.
 311.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 311.200 Agency and legislative liaison.
 311.205 Professional and technical services.
 311.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 311.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 311.400 Penalties.
 311.405 Penalty procedures.
 311.410 Enforcement.

Subpart E—Exemptions

- 311.500 Secretary of Defense.

Subpart F—Agency Reports

- 311.600 Semi-annual compilation.
 311.605 Inspector General report.
 APPENDIX A TO PART 311—CERTIFICATION REGARDING LOBBYING
 APPENDIX B TO PART 311—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Section 319, Public Law 101-121 (31 U.S.C. 1352); 22 U.S.C. 2503.

§ 311.100

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

SOURCE: 55 FR 6737, 6749, Feb. 26, 1990, unless otherwise noted.

Subpart A—General

§ 311.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in con-

22 CFR Ch. III (4–1–04 Edition)

nection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 311.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct

appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as

soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 311.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to

influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds

Peace Corps

§ 311.205

if that activity is allowable under either subpart B or C.

Subpart B—Activities by Own Employees

§ 311.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 311.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 311.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 311.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of

§311.210

22 CFR Ch. III (4–1–04 Edition)

his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§311.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§311.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §311.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §311.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services ren-

dered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, *professional and technical services* shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

Peace Corps

§311.600

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§311.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the

United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§311.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§311.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§311.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§311.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 311.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the

President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

**APPENDIX A TO PART 311—
CERTIFICATION REGARDING LOBBYING**

*Certification for Contracts, Grants, Loans, and
Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure

Peace Corps

Pt. 311, App. A

Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

APPENDIX B TO PART 311—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIESApproved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:		9. Award Amount, if known: \$ _____
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>		b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>
<i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i>		
11. Amount of Payment <i>(check all that apply):</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		13. Type of Payment <i>(check all that apply):</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____
12. Form of Payment <i>(check all that apply):</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i>		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

Peace Corps

§ 312.105

PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 312.100 What does this part do?
 312.105 Does this part apply to me?
 312.110 Are any of my federal assistance awards exempt from this part?
 312.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 312.200 What must I do to comply with this part?
 312.205 What must I include in my drug-free workplace statement?
 312.210 To whom must I distribute my drug-free workplace statement?
 312.215 What must I include in my drug-free awareness program?
 312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
 312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 312.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 312.300 What must I do to comply with this part if I am an individual recipient?
 312.301 [Reserved]

Subpart D—Responsibilities of Peace Corps Awarding Officials

- 312.400 What are my responsibilities as a Peace Corps awarding official?

Subpart E—Violations of This Part and Consequences

- 312.500 How are violations of this part determined for recipients other than individuals?
 312.505 How are violations of this part determined for recipients who are individuals?

Subpart F—Definitions

- 312.605 Award.
 312.610 Controlled substance.
 312.615 Conviction.
 312.620 Cooperative agreement.
 312.625 Criminal drug statute.
 312.630 Debarment.
 312.635 Drug-free workplace.
 312.640 Employee.
 312.645 Federal agency or agency.
 312.650 Grant.
 312.655 Individual.
 312.660 Recipient.
 312.665 State.
 312.670 Suspension.

AUTHORITY: 22 U.S.C. 2503 (b); 41 U.S.C. 701 *et seq.*

SOURCE: 68 FR 66588, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 312.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 312.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Peace Corps; or

(2) A(n) Peace Corps awarding official. (See definitions of award and recipient in §§ 312.605 and 312.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual	A, B and E.
(2) A recipient who is an individual	A, C and E.
(3) A(n) Peace Corps awarding official	A, D and E.

§ 312.110

§ 312.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Peace Corps Director or designee determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 312.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 312.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 312.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 312.205 through 312.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 312.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 312.230).

22 CFR Ch. III (4–1–04 Edition)

§ 312.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 312.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 312.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 312.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 312.205 and an ongoing awareness program as described in § 312.215, you must publish the statement and establish the program by the time given in the following table:

Peace Corps

§ 312.300

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Peace Corps awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 312.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

- (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 312.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Peace Corps award. A failure to do so is a violation of your drug-free workplace require-

ments. You may identify the workplaces—

(1) To the Peace Corps official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Peace Corps officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Peace Corps awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Peace Corps awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 312.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) Peace Corps award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any

§ 312.301

award activity, you will report the conviction:

- (1) In writing.
- (2) Within 10 calendar days of the conviction.
- (3) To the Peace Corps awarding official or other designee for each award that you currently have, unless § 312.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 312.301 [Reserved]

Subpart D—Responsibilities of Peace Corps Awarding Officials

§ 312.400 What are my responsibilities as a(n) Peace Corps awarding official?

As a(n) Peace Corps awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

- (a) Subpart B of this part, if the recipient is not an individual; or
- (b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 312.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Peace Corps Director or designee determines, in writing, that—

- (a) The recipient has violated the requirements of subpart B of this part; or
- (b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 312.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Peace Corps Director or designee determines, in writing, that—

22 CFR Ch. III (4–1–04 Edition)

- (a) The recipient has violated the requirements of subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 312.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 312.500 or § 312.505, the Peace Corps may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 22 CFR part 310, for a period not to exceed five years.

§ 312.515 Are there any exceptions to those actions?

The Peace Corps Director may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Peace Corps Director determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 312.605 Award.

Award means an award of financial assistance by the Peace Corps or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.

Peace Corps

- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

§312.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§312.615 Conviction.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§312.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in §312.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§312.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§312.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred,

in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689.

§312.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§312.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§312.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§312.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

§ 312.655

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 312.655 Individual.

Individual means a natural person.

§ 312.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 312.665 State.

State means any of the States of the United States, the District of Colum-

22 CFR Ch. III (4–1–04 Edition)

bia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 312.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.